

October 22, 2004

C. April Boling, CPA
San Diego County Republican
Central Committee
7185 Navajo Road, Suite L
San Diego, CA 92119

**Re: Your Request for Advice
Our File No. A-04-212**

Dear Ms. Boling:

This letter is in response to your request on behalf of the San Diego County Republican Central Committee (“SDCRCC”) for advice regarding the campaign provisions of the Political Reform Act (the “Act”).¹

QUESTION

How does the SDCRCC report expenditures made by the SDCRCC federal committee, which supports both state and federal candidates?

CONCLUSION

Your letter raises complex reporting issues that will be addressed by the Commission early next year. For this election period only (through December 31), the amount paid by the federal committee should be reported as contributions from the federal committee members to the state committee with the federal committee acting as an intermediary.

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

FACTS

Your request concerns the proper reporting of expenditures related to a door hanger paid for and distributed by the San Diego County Republican Central Committee. During our October 12, 2004, telephone conversation, you indicated that the SDCRCC is one entity made up of three bank accounts. One account is established for the purpose of supporting or opposing federal candidates and is registered as a federal recipient committee (the “federal committee”). Two accounts, one set up to receive contributions under the political party contribution limits for the purpose of supporting or opposing California state candidates and committees, and another set up to support or oppose other candidates or issues, are registered as a California state general purpose committee (the “state committee”). Unless otherwise specified, you make the decision as to which account contributions are deposited.

In September, SDCRCC prepared and printed a door hanger urging Republicans to vote, and providing them with a list of candidates and measures supported by the committee.

Because the door hanger contained recommendations relating to federal as well as non-federal candidates, you sought guidance from the Federal Election Commission (“FEC”) as to the proper reporting of this expenditure.

According to information provided to you by the FEC, federal law requires that the payment for the door hangers be initially made from federal funds. Since the door hanger is considered an exempt activity, reimbursement for the state portion is a maximum of 64 percent. You will therefore make a payment from the state committee to the federal committee for 64 percent of the cost of the door hangers. The expenditure will be reported on Schedule E of Form 460 and will be identified as a member communication (you indicate the member communication provisions apply to this door hanger).² You will identify the supported candidates or measures as required, and include subvendor information identifying the underlying vendor.

You seek advice relating to the difference between the 64 percent transfer allowed by federal law and the actual state benefit. On a space-used basis, the amount of the door hanger relating to state activity is approximately 80 percent. This is a 16 percent difference.

² “[P]ayments made by a political party for communications to its members who are registered with that party which would otherwise qualify as contributions or expenditures shall be reported in accordance with Article 2 (commencing with Section 84200) of Chapter 4, and Chapter 4.6 (commencing with Section 84600), of this title [the Act].” (Section 85312.)

ANALYSIS

Under the Act, a “contribution” is a payment made for political purposes unless full and adequate consideration is received. (Section 82015(a).)³

During our October 12, 2004, telephone conversation, you indicated that the SDCRCC is one entity made up of three bank accounts. One account is established for the purpose of supporting or opposing federal candidates and is registered as a federal recipient committee (the “federal committee”). Two accounts, one set up to receive contributions under the political party contribution limits for the purpose of supporting or opposing California state candidates and committees, and another set up to support or oppose other candidates or issues, are registered as a California state general purpose committee (the “state committee”). Unless otherwise specified, you make the decision as to which account contributions are deposited.

A payment is earmarked for political purposes when, at the time of making the payment, the donor knows or has reason to know that the funds with which the payment will be commingled will be used to make contributions or expenditures. (Regulation 18215(b)(1).) Factors relevant for determining whether a donor has reason to know that his or her payment will be used for political purposes can include the established practice of the organization collecting the payment, and any representations made by the organization when the payment is made. (*McCray* Advice Letter, No. A-89-334.) Based on this, contributors to the SDCRCC have reason to know that some of their money may be allocated to the state committee. Therefore, when payments are made from the federal committee that also support or oppose state or local candidates or ballot measures, the payments result in a contribution to the state committee.

It is anticipated that the Commission will address reporting and related issues raised by the new federal rules by regulation early next year. For this election period only (through December 31), the SDCRCC should report the federal committee’s payments (in this case, the 16 percent difference) toward California state and local candidates and measures on its state report. The federal committee’s share will be reported on Schedule A as a monetary contribution. The contribution will be allocated on Schedule A to contributors to the federal committee, based on the amount they have contributed to the federal committee since January 1, 2004, with the federal committee acting as an intermediary.

The sources and amounts of these contributions should be determined on a percentage basis. For example, assume the total contributions received by the federal committee since January 1, 2004, is \$100,000. If the cost of the door hangers paid by the federal committee (the 16 percent) is \$10,000, then 10 percent of each federal committee donor’s payment will be a contribution to the state committee. The state committee must identify those persons from whom it receives contributions of \$100 or more in a calendar year. Using this example, the state committee must identify each person who contributed

³ Section 82044 defines the term “payment” to include the rendering of “money, property, services or anything else of value, whether tangible or intangible.”

at least \$1,000 to the federal committee since January 1, 2004, because 10 percent of that person's contribution equals \$100 to the state committee.⁴ In addition, Schedule E will reflect the payment(s) to the applicable vendor(s) for the services. Because Schedule D should already reflect the total amount of payments made by SDCRCC to support California candidates and committees, no changes to Schedule D will be necessary.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca
General Counsel

By: Trish Mayer
Political Reform Consultant

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⁴ Affiliation issues and those related to the contribution limits for political party committees are not addressed in this letter, and will be included as part of the Commission's consideration of a proposed regulation or regulations.